

In the Matter of) Arizona Supreme Court
) No. R-16-0036
RULE 17.1(a)(4) AND FORM 28(a),)
ARIZONA RULES OF)
CRIMINAL PROCEDURE)
) **FILED 04/27/2017**
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)

A petition having been filed proposing to amend Rule 17.1, Arizona Rules of Criminal Procedure, and no comments having been received, upon consideration,

IT IS ORDERED that Rule 17.1(a)(4) and Form 28(a), Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective October 1, 2017.

DATED this 27th day of April, 2017.

/s/

SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

Hon. Paul Julien

Hon. Thomas J Robinson

ATTACHMENT¹

Arizona Rules of Criminal Procedure

Rule 17.1. Pleading by defendant

a. Personal Appearance; Appropriate Court.

(1) – (3) [No change in text.]

(4). *Pleas by Mail in Courts of Limited Jurisdiction.* Notwithstanding the requirements in Rules 1.6, 14.2, 17.1(a)(2), 17.2, 17.3, and 26.9 that the defendant personally appear before a judicial officer, courts of limited jurisdiction may accept a written plea of guilty or no contest to a misdemeanor or petty offense if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. Except as noted above, a plea submitted by mail must comply with the requirements of Rule 17 and must be signed by the defendant ~~and acknowledged by a notary public.~~

The defendant shall use the guilty/no contest plea by mail form appearing in the Appendix to these rules for entry of a plea by mail. The form shall recite that the defendant waives his or her constitutional rights, enters a plea of guilty or no contest to the offenses described in the complaint, and consents to the entry of judgment. The plea by mail form must include a statement for the court to consider when determining the appropriate sentence.

The court shall send the defendant by mail a copy of a judgment entered pursuant to this rule. The judgment of guilt may be used as a prior conviction in the event of a subsequent conviction.

A plea by mail shall not be available for the following:

- (i) Cases involving a victim;
- (ii) Cases in which the court may impose a jail term, unless the defendant is sentenced to time served, or the defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently;
- (iii) Cases in which the court may sentence the defendant to a term of probation;
- (iv) Offenses for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; and
- (v) When this method of entering a plea would not be in the interests of justice.

The local court shall establish a policy for participation by the prosecutor in pleas by mail.

¹ Deletions from the text of Rule 17.1(a)(4) are indicated by strikeouts. Form 28(a) is intended to replace current Form 28(a) in its entirety.

FORM 28(a) INSTRUCTIONS FOR COMPLETING THE FORM FOR ENTERING A "GUILTY/NO CONTEST PLEA BY MAIL"

Warning: The submission to the court of a completed form to enter a "guilty/no contest plea by mail" will have important legal consequences. Please read the entire plea and these instructions completely and carefully.

It is your responsibility to inquire with the Arizona Motor Vehicle Department regarding any other consequences of pleading guilty to a traffic offense and what impact that has on your Driver's License, especially a Commercial Driver's License (CDL). Consult a lawyer if you have any additional questions after reading these instructions.

Note: You must have a copy of the complaint charging you with a crime to complete the form.

You must complete each step below.

- (1) Enter your first name, middle name, and last name exactly as they appear on the complaint.
- (2) Enter the court's case number.
- (3) Check whether you are pleading guilty or no contest. Check only one box.
- (4) Provide the reasons why you have an "undue hardship." An undue hardship is something that makes it difficult for you to personally appear in court, such as an illness, physical incapacity, a substantial distance to travel, or you are currently in jail. The court will decide if you are allowed to enter a plea by mail. If you do not have an "undue hardship" or the court determines your case is not appropriate to handle by mail, you must personally appear in court.

I understand that the court will not accept a plea by mail if any of the following are true:

- my case involves a victim;
- the court may impose a jail term, unless I am sentenced to time served, or unless I am currently in jail and the jail time that is imposed would not extend the length of my current jail sentence;
- the court may impose a term of probation;
- my fingerprint is required to be on the sentencing document;
- a plea by mail would not be in the interests of justice; or
- I have not described in paragraph 12 below any undue hardship that justifies my plea by mail.

(5) Provide any information you would like the judge to consider before you are sentenced. You may attach additional pages if needed and attach any other documents you'd like the judge to consider.

(6) You must sign & date the plea by mail as well as provide your current address. Your signature confirms that you have read and understand the plea by mail form as well as these instructions, or that they have been read to you and that you understand them. If you do not read or speak English, please contact the court and request the assistance of an interpreter. If you have a lawyer, they must also sign the form and provide a State Bar number. Please note that only an attorney who is licensed to practice law in Arizona may sign the form. The court will mail you a copy of the judgment and sentence.

GUILTY/NO CONTEST PLEA BY MAIL

<p>(1) STATE OF ARIZONA, Plaintiff v. _____ Defendant (Print full legal name)</p>	<p>(2) Case/Complaint No. _____</p>	<p>GUILTY/ NO CONTEST PLEA BY MAIL & JUDGMENT OF CONVICTION</p>
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1. I have a copy of the criminal complaint in this case. I have read and I understand the charges filed against me. I hereby agree to plead (check only one): **(3)** ☐ Guilty or ☐ No Contest, to all of the charges in the complaint.

2. I am requesting to enter my plea by mail because my personal appearance in court would be an undue hardship for the following reasons:

(4) _____

3. I admit that if my case went to trial, the facts would support the charges.

4. I understand that the range of penalties for misdemeanor and petty offenses are as follows:

Class 1 misdemeanor: a suspended sentence up to a \$2500 fine, 6 months jail, and/or 3 years probation, plus surcharges and fees.
 Class 2 misdemeanor: a suspended sentence up to a \$750 fine, 4 months jail, and/or 2 years probation, plus surcharges and fees.
 Class 3 misdemeanor: a suspended sentence up to a \$500 fine, 30 days jail, and/or 1 year probation, plus surcharges and fees.
 Petty offense: a suspended sentence up to a \$300 fine, plus surcharges and fees.

5. If I am convicted of a future offense, this case may be used to increase a penalty on the new offense.

6. If I was on probation or parole at the time this offense occurred, pleading guilty or no contest may result in a petition to revoke my probation or parole and could include additional incarceration

7. I know that if I am not a citizen of the United States, pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen.

8. I understand that by entering my plea of guilty or no contest by mail I am giving up the following constitutional rights:

- a. The right to plead not guilty and to require the State to prove guilt beyond a reasonable doubt.
- b. The right to a trial, and depending on the charge(s) against me, a right to a trial by jury.
- c. The right to assistance of an attorney at all stages of the proceeding, including appeal. If I cannot afford one, I may be eligible for a court-appointed attorney at a reduced cost or at no cost.
- d. The right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony.
- e. The right to present evidence in my own behalf and to have the court compel my chosen witnesses to appear and to testify free of charge.
- f. The right to remain silent, not to incriminate myself, and to be presumed innocent unless/or until proven guilty beyond a reasonable doubt.
- g. The right to a direct appeal.

10. My plea is voluntary and not the result of force, threat, or promises.

11. I understand that I may file a petition for post-conviction relief in accordance with Rule 32 of the AZ Rules of Criminal Procedure, and if it is denied I may file a petition for review.

12. I give up the right to be present at the time of sentencing. I would like the court to consider the following information in determining an appropriate sentence (attach additional pages if needed):

(5) _____

Oath & acknowledgement. I swear or affirm that have read, truthfully answered and not misrepresented information contained in this plea under penalty of perjury. I understand that the court will determine the sentence and mail a copy of its judgment to me. I will be responsible for fulfilling the penalties and the sentence imposed by the court.

(6) Dated: _____ Defendants Signature _____

(Address) _____ (City) _____ (State) _____ (Zip Code) _____

(if any) Defense Counsel Signature/AZ Bar # _____

THIS SECTION IS FOR COURT USE ONLY

ACCEPTANCE OF PLEA AND JUDGMENT OF CONVICTION

The court has reviewed the defendant's statements set forth in this Guilty/No Contest Plea by Mail form. The court finds a basis in fact for believing the defendant is guilty of the offense(s) charged, and that the defendant's plea of guilty or no contest is voluntary and intelligent. I accept the defendant's plea and find that the defendant is guilty of the following offense(s) alleged in the complaint:

Case # _____ For the offenses committed on _____ 20____

Count 1 : _____ a class 1, 2, 3 misdemeanor. or ☐ Petty offense.
(Description of offense)

Or ☐ civil traffic offense: a violation of A.R.S. § _____

SENTENCE: The defendant is sentenced as follows: _____

Count 2 : _____ a class 1, 2, 3 misdemeanor. or ☐ Petty offense.
(Description of offense)

Or ☐ civil traffic offense: a violation of A.R.S. § _____

SENTENCE: The defendant is sentenced as follows: _____

Count 3 : _____ a class 1, 2, 3 misdemeanor. or ☐ Petty offense.
(Description of offense)

Or ☐ civil traffic offense: a violation of A.R.S. § _____

SENTENCE: The defendant is sentenced as follows: _____

Count 4 : _____ a class 1, 2, 3 misdemeanor. or ☐ Petty offense.
(Description of offense)

Or ☐ civil traffic offense: a violation of A.R.S. § _____

SENTENCE: The defendant is sentenced as follows: _____

Count 5 : _____ a class 1, 2, 3 misdemeanor. or ☐ Petty offense.
(Description of offense)

Or ☐ civil traffic offense: a violation of A.R.S. § _____

SENTENCE: The defendant is sentenced as follows: _____

Dated: _____ Judge _____

I CERTIFY that a copy of this document was mailed to defendant at the address shown above on this date: _____ by (Clerk's name or initials): _____.